

TOWN COUNCIL SPECIAL MEETING - WEDNESDAY EVENING - JUNE 9, 2010

PRESENT: Marshall, Cordeiro, Parella, Barboza, and Herreshoff

ALSO PRESENT: Diane C. Mederos, Town Administrator
Andrew M. Teitz, Assistant Town Solicitor

The Council met in special session on Wednesday evening, June 9, 2010 in the Town Hall, Council Chambers beginning at 7:15 o'clock PM, Council Chairman Marshall presiding:

In the matter of the Mount Hope Farm:

It is hereby noted for the record that Councilman Barboza renewed his recusal concerning this matter.

1. Michael A. Ursillo, Esq., Ursillo, Teitz & Ritch, Ltd. re Mount Hope Trust conflict of interest waiver.

Cordeiro/Parella - Voted to place this matter on the table.
Voting in favor of this motion were Council members Marshall, Cordeiro and Parella. Voting opposed was Councilman Herreshoff. Councilman Barboza recused.

Prior to the vote taken, Councilman Barboza renewed his recusal concerning the Mount Hope Trust.

Council Chairman Marshall noted that he was concerned regarding the "clarity and transparency" of this matter and since the Town Solicitor's firm represents both the Town and Mount Hope Trust he would prefer if the Town's interest in this matter might be kept separate and that it might be better if separate counsel would represent the Town.

Councilman Herreshoff stated that the Town Solicitor is paid to represent the Town and that he did not think it necessary for the Town to retain separate counsel in this matter.

Councilman Cordeiro termed the Solicitor's position in this case to be "precarious."

Councilman Herreshoff noted that the Town Solicitor's firm has represented the Town for longer than fifteen (15) years and that his trustworthiness in his service to the Town has not been previously questioned.

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2. Michael Gerhardt, Interim Executive Director, Mount Hope Trust in Bristol re request for a secured loan, continued from June 2, 2010

a. Evan Smith, President, Newport/Bristol Convention & Visitors Bureau re support for Mount Hope Farm

b. (Council Chairman Marshall) to Michael Gerhardt re "request for bridge funding" June 9, 2010 (received at meeting.)

It is hereby noted for the record that Assistant Solicitor Teitz recused himself from the discussion and action on this matter.

Herreshoff/Parella - Voted to approve a mortgage loan per the memorandum noted as item 1 (b) above; striking the second paragraph and also the final paragraph for an amount up to \$200,000 with \$100,000 payable on or about June 10, 2010 and subject to the filing of the mortgage agreement and the remainder payable on or about August 18, 2010 based upon the approval by the Trust and also by the Town Council of certain amendments to Article III and Article IV of the Trust Bylaws.

Prior to the vote taken, Evan Smith informed the Council that he was concerned that the region has lost the availability of Hammersmith Farm and Astor's Beechwood as event venues and publicly enjoyed properties and that he did not wish to also lose Mount Hope Farm. He noted that the "Farm" was a tremendous asset to the region and also a "natural treasure" to support passive recreation.

Mr. Smith added that he was present to lend his support for a Council decision to provide the "bride loan" to Mount Hope Farm in order that the property would be preserved.

Council Chairman Marshall agreed with Mr. Smith stating that his opinion is that Mount Hope Farm has "unlimited potential."

Council Chairman Marshall read the content of Mr. Gerhard's letter aloud.

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Councilwoman Parella noted that Mr. Gerhardt seemed to indicate that less than \$350,000 would be needed; perhaps \$150,000-\$200,000.

Town Treasurer Day noted that Mr. Gerhardt appears to have set some achievable goals based upon current expenses and that \$150,000 is being requested to cover current projected shortfalls. He added that he was hopeful that the new interest and direction of the Farm will result in better than anticipated revenues and that the Trust may not need the entire \$150,000. Council Chairman Marshall further noted that he and Councilman Cordeiro sat with Mr. Gerhardt in order to review the forecast income and shortfalls for 2010, 2011 and 2012.

Mr. Gerhardt noted that the projected loss for the transitional period equals approximately \$150,000 and that the Trust also has a cash-flow problem. He further explained that there is a need for liquidity in order to conduct business.

Mr. Gerhardt added that the idea of the originally proposed \$350,000 was an outside figure and that he never anticipated the need to borrow the total amount. He suggested that \$200,000 would be a more realistic and workable figure.

Councilman Herreshoff noted that he preferred to consider this matter only once and not require the Trust to return for incremental approval. He added that the current prospects appear to have a high opportunity for success.

Mr. Gerhardt noted that the Trustees were not totally comfortable with asking the Town for assistance and there was discussion regarding possible alternatives.

Councilwoman Parella agreed that the Town plan appeared to be the most expeditious. She noted that the Trust must take immediate action to secure revenues such as those which might come forth from rentals, etc., and be "out there" securing future business.

Mr. Gerhardt noted that the Trust "Governance Committee" met today to discuss some suggested changes to the Trust Bylaws. He also noted that the recent Antiques Fair at the Farm was a success and that other things were "happening."

Councilman Cordeiro noted that he was originally not in favor of providing the bridge loan but that Mr. Gerhardt's leadership at the Farm changed his mind.

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Mr. Gerhardt noted that the Trust may decide to de-accession the subject property if the market improves significantly with Councilwoman Parella stating that she did not think it advisable for "museums" to sell property as a "first line of defense."

A discussion ensued regarding the amendments to the Bylaws with Councilman Herreshoff asking why Articles 3 and 4 were the only ones requiring Town Council ratification.

Mr. Gerhardt noted that these articles specifically dealt with Trust membership and ownership of land.

Mr. Gerhardt added that the Trust plans to approve the Bylaws amendments in July in time for Council consideration at its August meeting.

Councilwoman Parella suggested that there should be no Town representative on the Trust with Town Administrator Mederos reporting that there appeared to be consensus among the Trust members and also the Governance Committee that this should be the case.

Councilman Herreshoff agreed that the Town should have its "fingers out" of the Trust.

Doreen Alhamdouni of 6 Heritage Road informed the Council that her property abuts the parcels offered as security for the loan and that she believed that the benefactor who donated funds to secure this property stipulated that it would not be developed.

Councilman Herreshoff suggested that this fact might be researched.

Council Chairman Marshall noted that it appeared to be a goal of Mount Hope Farm that open space should remain open.

Director of Community Development Williamson noted that she believes the parcel along Metacom Avenue was a "buffer parcel."

Councilman Herreshoff suggested that Director of Community Development Williamson might prepare a "white paper" concerning the open space covenants for Mount Hope Farm properties.

Brian Clark of 7 Heritage Road, also an abutter, suggested that the Council action might be postponed for two (2) weeks in order to find answers to the questions as posed by Ms. Alhamdouni. He

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also asked to know what would happen to the property if the Mount Hope Trust is in default of the conditions of the loan and the Town finds that the land cannot be developed.

Councilman Herreshoff noted that the development issue is not pertinent at this time since the Town is only considering the property as collateral for a loan and that it is certainly worth as much as the proposed loan as a single house lot.

Mr. Clark asked to know why the Trust did not secure a loan through a bank with Council Chairman Marshall noting that the Trust has insufficient income at this time to qualify for a traditional loan.

Council Chairman Marshall added that the Trust Bylaws allow for the sale of certain property which the Trust does not wish to do. He added that the Town's agreement to accept the property as collateral protects it while providing some "breathing room" for the Trust to rectify its business problems.

Mr. Clark suggested that the parcel is not valuable enough to secure the loan with Council Chairman Marshall noting that the Council does not plan to over-extend. He added that the Council will likely provide a \$200,000 loan and that the property consisting of 1.7 acres and a cottage must be worth near \$200,000 if not more. He added that he was hopeful that the Trust will pay back the loan during the time to be allotted and there will be no need to sell the property.

Mr. Clark added that he was concerned since he is a direct abutter to the subject property.

Mr. Gerhardt suggested that the Town might structure the loan to provide \$100,000 when the agreement is signed and another \$100,000 upon the approval of an amendment to the Bylaws.

Councilman Herreshoff noted a memorandum provided by Council Chairman Marshall addressed to Mr. Gerhardt and suggested that the second paragraph should be amended to consider a loan of \$200,000, secured by the property without any further conditions such as the requirement to sell and repay.

Councilwoman Parella agreed that the loan should be repaid but that it would be impractical to set a condition regarding sale of the property.

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Council Chairman Marshall noted that he was not certain if any Mount Hope Farm conservation easements were recorded in the Town's land evidence records.

Mr. Gerhardt noted that not all of the lands at Mount Hope Farm are subject to the conditions of a conservation easement.

Councilman Herreshoff noted that the last paragraph of Council Chairman Marshall's memorandum may "muddy the waters" he suggested that it not become a condition of the loan.

Council Chairman Marshall suggested that some reference to conservation easements should be part of the loan so as to protect the property in perpetuity.

Councilman Herreshoff noted that the Council needs to know what exists in terms of conservation easements at the present time in order to know how to move forward regarding same. He again asked for Director of Community Development Williamson to prepare a "white paper" concerning the easements.

Director of Community Development Williamson reported that some of the lands have conservation easements and some do not. She added that too many restrictions might pose "competing missions" since there was always some thought regarding a certain amount of controlled development in order that the Farm would be sustainable. She added that any easements must be carefully defined.

Councilman Herreshoff agreed that too many constraints may unnecessarily "tie the hands" of a future board.

Councilman Cordeiro suggested that the final paragraph of the Chairman's memorandum might be held in abeyance until the August meeting.

George Burman of 66 Highland Road suggested that the Trust should develop a master plan and a business plan prior to agreement to any specific conservation easements.

Councilwoman Parella agreed that the Trust should have a strategic planning committee and a survey of the property prior to its granting of conservation easements.

Keith Maloney of 60 Van Wickle Lane asked to know if committee membership at Mount Hope Trust was open to the public or if held only by Trust members with Mr. Gerhardt explaining that anyone

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who wished to serve on a committee may apply. He further noted that all committees are advisory in nature.

David Barboza, representing himself as a private citizen and member of the Board of Trustees noted that the Trust is planning its annual "summertime jazz" event and that the committee planning same welcomes volunteers at large to participate.

3. Resolution re sale of property known as "the Rescue Station" 349 High Street, Plat 13, Lot 1, 1st reading and call for a public hearing on June 16, 2010.

Barboza/Cordeiro - Voted unanimously to consider this action to constitute the First Reading of the Resolution to sell the Rescue Station and call for a public hearing to be held on Wednesday, June 16, 2010, beginning at 7:00 o'clock PM.

It is hereby noted for the record that action on the above agenda item took place prior to the Council discussion and vote on Agenda Item #2.

4. Timothy McClosky for Bristol County Elks, 1 Constitution Street - request for a One-Day Sunday Dancing and Entertainment License for June 13, 2010

a. Recommendation - Town Administrator and Police Chief

Barboza/Cordeiro - Voted unanimously to grant this license based upon the recommendations received and subject to conformance to all laws and ordinances and payment of all applicable fees, taxes and levies.

It is hereby noted for the record that action on the above agenda item took place prior to the Council discussion and vote on Agenda Item #2.

5. Public Hearing re Ordinance #2010-03 - CHAPTER 28, Zoning, Articles 1 through XI, Divisions 1 through 6, Sections 28-1 through 28-411, (various amendments to the Zoning Ordinance) 2nd reading for adoption (continued from May 26, 2010 concerning only proposed section 28-150 (j) Special use standards for wind energy conversion systems)

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a. Director of Community Development Williamson and Principal Planner/Zoning Officer Tanner re proposed amendments to Section 28-150 (j) of the Zoning Ordinance.

Barboza/Parella - Voted unanimously to continue this matter and public hearing until the meeting of June 16, 2010.

6. Workshop re proposed Town Charter revisions and amendments

Parella/Cordeiro - Voted unanimously to discharge the Commission with thanks and praise and to forward the recommended amendments to the regular meeting of June 16, 2010 for the purpose of scheduling a special Council working session concerning same.

Prior to the vote taken, Councilman Cordeiro thanked the Commission for its work on behalf of the Town.

Fausto Anguilla, Chairman of the Commission, noted that the Commission recorded only one vote and that the document presented was one of consensus.

Councilman Herreshoff asked to know the process to follow concerning this proposal with Council Chairman Marshall explaining that perhaps some changes can be considered as "housekeeping."

Council Chairman Marshall noted that there was much to consider in the document as presented and that the Council would need time to "digest" the material.

Mr. Anguilla noted that some of the proposed changes such as the recommendation to make the Charter "gender neutral" could be "lumped together" into a single question for voter consideration.

He noted that the proposed change from "Town Administrator" to "Mayor" occurs throughout the Charter but does not change the powers of the office. He added that there was no opposition to this change expressed at the Charter Commission meetings.

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Mr. Anguilla noted that the Commission held fourteen (14) meetings and that it presents recommendations but it is up to the Council to decide which of these will be sent to the voters.

Mr. Anguilla explained that the Commission recommends several changes to amplify the powers of the Town Council; these found in Section 207 and would cause to require Council approval for all contracts, consulting agreements, and employee collective bargaining agreements. He noted that the contract/agreement threshold for requiring Council approval was recommended at \$25,000. He added that this is a practice elsewhere in Rhode Island.

Councilwoman Parella noted that the Council already has authority over bids and typically refers these to the Town Administrator but does not necessarily have to do so. She added that the Council can already approve purchases and/or consulting contracts via its bid process.

Mr. Anguilla informed the Council that there does not appear to be any current authority of the Council over collective bargaining negotiation and that the proposed new Charter language provides same.

Councilman Herreshoff stated that he did not think this was advisable since the members of the bargaining unit will go directly to the Council and undermine the authority of the Town Administrator. He added that the proposal of the Commission seems to convolute an already effective process.

Councilman Barboza added that contract negotiations often take months and that the addition of another layer of authorization may make the process unnecessarily difficult.

Council Chairman Marshall noted that the proposal of the Charter Review Commission are "suggestions" for Council consideration.

Mr. Anguilla stated that the recommendation of the Charter Review Commission concludes that the Council should have oversight concerning these contracts and agreements.

Councilwoman Parella stated that she sat through hundreds of "advise and consent" hearings when in the General Assembly and found these to be unproductive since she was of the opinion that the chief executive should have the right to chose his or her own department managers.

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Mr. Anguilla noted that the provisions allow the Council to disapprove of a Town Administrator's choice with Councilwoman Parella responding that this would compromise the Town Administrator's authority.

Mr. Anguilla stated that the provision is an attempt to find "balance" of authority.

Councilwoman Parella stated that the provisions as proposed regarding Administrator authority appear to be more suited to an appointed "town manager" and not an elected Administrator/Mayor. She further stated that the provisions will "tie the hands" of the Administrator who must have control of the "big picture" when choosing department heads.

Councilman Cordeiro stated that he considered statements made by certain department heads indicating that they work for the Town Administrator and not the Council as a "slap in the face."

Councilman Herreshoff noted that prior to the adoption of the Charter, the Town was essentially "directionless" and that the originally adopted Charter called for a strong Administrator. He suggested that some of the Charter Commission's recommendations would "pull the rug out" from under the Administrator.

Mr. Anguilla again stated that the purpose of the recommended amendments was to provide balance. He noted that the authority of the Administrator/Mayor should be somewhere in-between "strong and ceremonial."

Councilwoman Parella noted that these provisions appear to be the most controversial of all of those recommended. She asked if these were suggestions made based upon any particular research with Mr. Anguilla noting that these were essentially based upon the "advise and consent" practice.

Regarding Section 208, Mr. Anguilla informed the Council that the Charter Commission recommends changing the number of signatures to require a public hearing from twenty (20) to five (5) with Mr. Anguilla further explaining that the intention of the amendment was to make the process easier.

He also explained that the recommended amendments would require that the Town Clerk substitute for the Town Administrator when the Administrator was absent. He noted that currently this is discretionary.

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Regarding Article 4, Mr. Anguilla noted that these amendments were proposed by former Town Administrator Joseph Parella and that the changes would require monthly reports from the Town Treasurer and also changes authority for the preparation of the budget from the responsibility of the Town Treasurer to that of the Town Administrator.

A discussion ensued regarding the questions that would be posed to the electorate with Assistant Solicitor Teitz noting that the Council should decide upon which of the proposed amendments should be presented and the Solicitor's office will work on the questions.

Regarding Section 801, Police, Gerald Walsh noted that the proposed amendment would require that the Chief of Police should have a bachelor's degree in a related field. He added that the amendment also establishes experience factors for the Chief's position.

Councilwoman Parella commented that a bachelor's degree in psychology might be useful for the position with Mr. Walsh noting that the purpose of the revision was to "raise the bar" for the position.

Councilman Barboza agreed that a bachelor's degree would be advisable.

Mr. Walsh reported that Michael DeMello worked on the Fire Department section also and that the overall goal of the amendment is to raise the level of expertise needed for the Chief's position.

Councilman Barboza expressed his opinion that the amendments, as proposed, appeared to be worthwhile.

Barbara Healey noted that the proposed amendments place the Harbor Department within the "public safety" section of the Charter. She noted a significant change in that under the proposed amendment, the Harbor Master would report to the Town Administrator/Mayor.

Councilman Cordeiro noted that the Harbor Master currently reports to the Council and he questioned the need to change this authority with Ms. Healey responding that the consideration is for day-to-day reporting and that the other two "public safety" departments report to the Town Administrator. She added that the

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provision still has the Harbor Master appointed by the Council; the current practice.

Councilman Herreshoff asked to know if the Charter Review Commission considered the possibility of the Harbor Master being appointed by the Town Administrator with Ms. Healey responding that it did consider that possibility.

Councilman Cordeiro noted that it is difficult for him to give up Council control.

Councilwoman Parella stated that she was in agreement that the department should be part of public safety but that she was concerned regarding the "split authority."

A discussion ensued regarding the use of weapons with Assistant Solicitor Teitz reminding the Council that officers must attend the police academy prior to their use of weapons.

Ms. Healey stated that the Council may wish to "iron out" the issue relating to the appointment/reporting of the Harbor Master.

Mr. Anguilla noted that the proposed amendment seems to reflect what might be considered as past practice. He added that if the Harbor Master is to be considered a public safety officer then he should report to the Town Administrator.

Councilman Herreshoff stated that this might be thought of as an "advise and consent" with Mr. Anguilla responding that this would be the exception in respect to the Town's public safety departments.

Joseph Parella noted that the changes to the recreation section are recommending that the Recreation Board should be eliminated. He further noted that it is difficult for the Recreation Director to "serve two masters," these being the Recreation Board and also the Town Administrator.

Mr. Parella added that since the Recreation Director has become a full-time employee with a day-to-day operation it made sense to have the position report to the Town Administrator.

Mr. Parella also reported that another amendment recommends that the Water Pollution Control department should have its own new section.

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Mr. Parella also reported that the Personnel Board section is "antiquated" and that the recommended amendment "cleaned-up" the language in the Charter so that the Board will proctor tests and write job descriptions.

Councilman Herreshoff asked to know if the recommendation eliminates the powers of the Personnel Board with Mr. Parella reporting that the various contracts and collective bargaining agreements have "rendered useless" the Personnel Board.

Councilman Barboza asked to know about the Board's authority to compile test scores for the police department with Mr. Parella explaining that the tests would be proctored by the Personnel Board under the new arrangement.

Mr. Anguilla reported that the authority should rest with the Town Administrator since the Administrator does the hiring. He added that the authority of the Personnel Board has been usurped by the collective bargaining agreements.

Mr. Anguilla reported that John Francis IV drafted the Public Works and Environment sections. There were no questions regarding these draft amendments.

Concerning capital project committees, Mr. Anguilla stated that the Bond Counsel "circumvents the Charter" each time that a bond issue is placed before the voters. He further added that the bond legislation has typically asked the voters to release the Charter provision that requires elected capital project committee members.

Mr. Anguilla reported that the proposed Charter amendment would require a permanent standing commission to oversee all capital projects; this having four (4) members of the public and three (3) members of the Administration.

Councilwoman Parella stated that she understood the rationale for the establishment of this recommendation but expressed concern that its permanent nature (and lack of specific interest in a particular project) may sacrifice the participation of persons who are most familiar with the need to be satisfied by the project.

Mr. Anguilla stated that an "advocate" may become too emotional regarding the project and that the purpose of the capital project commission is to "oversee and monitor" a particular project.

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Councilman Herreshoff stated that there have been good and not so good versions of the current capital project committee. He noted that the former Capital Project Sewer Committee which met monthly during his tenure as Town Administrator was a "good committee" but the Library Capital Project Committee was a "turmoil." He added that there is a need to have certain technical consideration on the committee but that the committees cannot be run by "zealots."

Councilwoman Parella stated that she might agree to a permanent committee if the Council maintains the authority to "add and subtract."

Mr. Anguilla also reviewed a new section to authorize the Council as the "Charter enforcement committee." He added that the Clerk would become the gate-keeper for this new provision.

The Council thanked the various members of the Charter Review Commission for their contributions to the effort.

There being no further business, upon a motion by Councilman Barboza, seconded by Councilman Cordeiro and voted unanimously, the Chairman declared this meeting to be adjourned at 10:07 o'clock PM.

Louis P. Cirillo, CMC
Council Clerk